

REMARKS

With entry of this amendment, claims 2, and 45-48 are pending in the above identified application. Claims 1, and 3-44 have been canceled without prejudice to Applicants' right to prosecute the subject matter of these claims in a related, co-pending application. Claims 45-48 have been added as set forth in detail below and Claim 2 has been amended to change the dependency from canceled claim 1 to new claim 45. No new matter has been added by these amendments.

Rejections under 35 U.S.C. §112, First Paragraph

Claims 1, 2, 4, 7, 10-13, 16-23, and 39-44 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing the subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Applicants, while not acquiescing to the Examiner's rejection or reasons for rejection note that the instant rejection is obviated in view of the cancellation of claims 1, 4, 7, 10-13, 16-23, and 39-44 without prejudice and the amendment of claim 2 to depend from new claim 45.

Claims 1, 2, 4, 7, 10-13, 16-23, and 39-44 stand rejected under 35 U.S.C. 112, first paragraph, the Examiner believing the specification, while being enabling DNA encoding a protein to stimulate ribosomal RNA transcription, does not reasonably provide enablement for how to use any other hybridizing nucleic acid molecules that do not encode a protein capable of stimulating ribosomal RNA stimulation. Applicants, while not acquiescing to the rejection of the Examiner or the reasons of record supporting the rejection note that the instant rejection is obviated in view of the cancellation of claims 1, 4, 7, 10-13, 16-23, and 39-44 without prejudice and the amendment of claim 2 to depend from new claim 45.

Rejections under 35 U.S.C. §112, Second Paragraph

Claims 1 and 7 stand rejected under 35 U.S.C. 112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants, while not acquiescing to the Examiner's rejection or reasons for rejection note that the instant rejection is obviated in view of the cancellation without prejudice of claims 1 and 7, and all claims depending therefrom.

Claim Rejections under 35 USC §102

Claim 39 stands rejected under 35 U.S.C. 102(b) as allegedly anticipated by WO 99/0549. Applicants, without acquiescing to the Examiner's rejection or reasons for rejection note that the instant rejection is obviated in view of the cancellation without prejudice of claim 39.

New Claims and Claim Amendments

New claims 45-48 have been added to set forth certain embodiments of the instant invention with greater particularity as set forth below and to further expedite prosecution of the instant application. Claim 2 has been amended to change the dependency from a cancelled claim to new claim 45 as set forth below.

New claim 45 recites an isolated nucleic acid that encodes an RRN3 polypeptide having the amino acid sequence set forth in SEQ ID NO:2, or the full-length complement of the nucleic acid encoding SEQ ID NO:2. Applicants note that none of the cited art disclose an isolated nucleic acid as recited in claim 45. In particular, Applicants respectfully direct the Examiner's attention to SEQ ID NO:2 (on page 9) of U.S. Patent Application No. US2002/0146801 A1 (hereinafter Grummet *et al.*), in which an amino acid residue is not disclosed for the TIF-IA polypeptide at position 228 (*see also* Figure 2). Further, Applicants' disclosure of an amino acid sequence for an RRN3 polypeptide, as set forth in SEQ ID NO:2 of the present application, is sufficient to show possession of the full genus of nucleic acids encoding the polypeptide. (*See Guidelines for Examination of Patent Applications Under the 35*

*U.S.C. 112, ¶1, "Written Description" Requirement*, 66 Fed. Reg. 1099, n.57 (January 5, 2001).

At least for these reasons, Applicants believe claim 45 to be allowable.

Claim 46, which depends from claim 45, recites that the nucleic acid has the nucleotide sequence set forth in SEQ ID NO:1, or the full-length complement thereof. The Examiner has indicated SEQ ID NO:1 to be free of the prior art and therefore allowable.

Claim 2 has been amended to depend from claim 45, recites that the nucleic acid is genomic DNA, cDNA, or RNA. Because claim 2 as amended depends from 45, which Applicants believe to be allowable for the reasons stated above, claim 2 as amended should also be allowable.

Claim 47 recites an expression construct comprising a transcriptional promoter; a nucleic acid coding for an RRN3 polypeptide having the amino acid sequence set forth in SEQ ID NO:2; and a transcriptional terminator. Applicants believe claim 47 to be allowable at least for the reasons set forth above with respect to claim 45.

Claim 48, which depends from claim 47, recites that the nucleic acid coding for the RRN3 polypeptide has the nucleotide sequence set forth in SEQ ID NO:1. Applicants again note that the Examiner has indicated SEQ ID NO:1 to be free of the prior art. Therefore, claim 48 should be allowable.

### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. If the Examiner believes a telephone conference would

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expedite prosecution of this application, please telephone the undersigned at 206-467-9600.

Respectfully submitted,

Dated: 10 May 2004

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